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GIBSON ROBB LINDH

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10 JUN 24 PM 2:34

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIAmjb  
DEPUTY

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6 Attorneys for Plaintiffs PACIFIC ASIAN ENTERPRISES and RLI INSURANCE  
 7 COMPANY

8 IN THE UNITED STATES DISTRICT COURT  
 9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 PACIFIC ASIAN ENTERPRISES, a  
 12 California corporation, and RLI  
 INSURANCE COMPANY, an  
 13 Illinois corporation,

14 Plaintiffs,

15 v.

16 CROSS CHARTERING N.V., a  
 foreign limited liability company, *in*  
 17 *personam*; SSA MARINE, INC., a  
 Washington corporation doing  
 18 business as STEVEDORE  
 SERVICES OF AMERICA; and  
 19 M.V. CATALONIA V-285, her  
 machinery, tackle, and engines, etc.,  
 20 *in rem*;

21 Defendants.

Case No. 10 CV 1335 LAB

WVG

ADMIRALTY-MARITIME  
 COMPLAINT FOR DAMAGE TO  
 OCEAN CARGO AND BREACH OF  
 CONTRACT OF CARRIAGE

VIA FAX

22 Plaintiffs allege as follows:

23 GENERAL ALLEGATIONS

24 1. The causes of action in this complaint are for breach of contract of  
 25 carriage, and for negligent, reckless and/or intentional damage to ocean cargo.  
 26 These claims fall within the admiralty jurisdiction of this Court, and are admiralty  
 27 and maritime claims within the meaning of Rule 9(h), Federal Rules of Civil  
 28 Procedure, as more fully appears herein.

CR

1           2.     Plaintiff PACIFIC ASIAN ENTERPRISES ("PAE") is now and at all  
2 times material herein was a corporation duly organized and existing by virtue of  
3 law. PAE was at all times material herein the owner of the hereinafter described  
4 cargo. Plaintiff RLI INSURANCE COMPANY ("RLI") is now and at all times  
5 material herein was a corporation duly organized and existing by law.

6           3.     Prior to the shipment of the herein described cargo and prior to any  
7 loss thereto, plaintiff RLI issued its policy of insurance whereby plaintiff RLI  
8 agreed to indemnify the owner of the cargo, and its assigns, against loss or  
9 damage, including mitigation expenses, and plaintiff RLI has therefore become  
10 obligated to pay, and has paid to the person entitled to payment under said policy  
11 the sum of \$1,826,777.86, on account of the herein described loss and seeks  
12 reimbursement of that amount less offset amounts, for a total un-reimbursed loss  
13 of \$1,713,498.22. Plaintiff PAE has a \$17,839.50 deductible interest on account  
14 of the herein described loss.

15           4.     Plaintiffs are informed and believe and on the basis of that  
16 information and belief allege, that CROSS CHARTERING N.V., ("CROSS") a  
17 foreign limited liability company, and SSA MARINE, INC., a Washington  
18 corporation doing business as STEVEDORE SERVICES OF AMERICA,  
19 ("SSA") are now and at all times herein material were engaged in business as  
20 ocean carriers of goods for hire in international commerce from Asia to the United  
21 States, and/or were engaged in business as stevedores and/or longshoremen in the  
22 loading, unloading, and handling of cargo in San Diego, California.

23           5.     The defendant vessel, M.V. CATALONIA V-285 ("CATALONIA"),  
24 is a Maltese flag vessel of 24,960 tons gross, more or less, and is managed by FH  
25 Bertling, KG. The CATALONIA is now or will be during the pendency of this  
26 Action within the waters within the territorial jurisdiction of this Honorable Court.

27           6.     Plaintiffs are informed and believe and on the basis of that  
28 information and belief allege, that on or about June 4, 2009, defendants CROSS

1 and CATALONIA, and each of them, received in good order and condition a  
2 cargo of one Nordhavn 56' Motor Sailer, Hull No. 5 ("the Nordhavn"), for carriage  
3 under bill of lading number CCGJ28509KASD001, and others, issued by and/or  
4 on behalf of said defendants. CROSS and defendant vessel CATALONIA agreed,  
5 under contracts of carriage and in return for good and valuable consideration, to  
6 carry the Nordhavn from Kaohsiung, Taiwan, to San Diego, California and there  
7 deliver said Nordhavn to the lawful holder of the aforementioned bills of lading,  
8 and others, in the same good order, condition, and quantity as when received.

9 7. Plaintiffs are informed and believe and on the basis of such  
10 information and belief allege, that on or about June 27, 2009, upon the  
11 CATALONIA's arrival in San Diego, and during off-loading of the Nordhavn  
12 from the CATALONIA by CROSS and SSA and others via a pair of ship's cranes,  
13 the Nordhavn was dropped, damaging her such that she sank and became a total  
14 loss. Plaintiffs accordingly suffered net damages in the amount of depreciation to  
15 the value of the Nordhavn and expenses incurred as a result of the sinking, in the  
16 amount of \$1,731,337.73.

#### 17 FIRST CAUSE OF ACTION

#### 18 (Breach of Contract - Damage to Cargo - Against CROSS and CATALONIA)

19 8. Plaintiffs reallege and incorporate paragraphs one through seven  
20 above.

21 9. In breach of and in violation of the agreements alleged in paragraph  
22 six above, defendants and each of them did not deliver the Nordhavn in the same  
23 good order, condition, and quantity as when received in Taiwan. To the contrary,  
24 the Nordhavn was 'delivered' as a total loss after she was raised following the  
25 crane accident and subsequent sinking as set forth in paragraph 7. Plaintiffs  
26 accordingly suffered damages in the amount of depreciation to the value of the  
27 Nordhavn and expenses incurred as a result of the sinking, in the amount of  
28 \$1,731,337.73.

10. Wherefore, plaintiffs pray for judgment as hereinafter set forth.

**SECOND CAUSE OF ACTION**

**(Reckless, Intentional and Negligent Damage to Cargo - Against Defendants**

**SSA, CROSS, and CATALONIA)**

11. Plaintiffs reallege and incorporate paragraphs one through seven above.

12. SSA, CROSS, and CATALONIA owed a duty to exercise due care in the carriage, loading and unloading of the Nordhavn.

13. Defendants SSA, CROSS, and CATALONIA breached their respective duties of due care by, among other things, failing to properly, safely, or carefully unload the Nordhavn from the CATALONIA upon arrival in San Diego. Moreover, SSA, CROSS, and CATALONIA acted recklessly and with knowledge or substantial certainty that the NORDHAVN would be damaged. Before the dropping and sinking of the NORDHAVN, employees and agents of the defendants witnessed and remarked that the crane operators for the two cranes were failing to operate the cranes properly during the unloading of other cargo, thereby risking dropping cargo. Despite these observations, defendants allowed the crane operators to continue unloading the vessel, and the crane operators' improper operations allowed the Nordhavn to fall from her cradle, hit the CATALONIA, and sink. Defendants, and each of them, allowed the crane operators to flee the scene of the accident.

14. Said reckless and intentional conduct and breaches of duty actually and proximately caused the Nordhavn to be dropped, damaging her and causing her to sink. As a result, plaintiffs suffered net damages in the amount of depreciation to the value of the Nordhavn and expenses incurred as a result of the dropping and sinking, in the amount of \$1,731,337.73.

15. Wherefore, plaintiffs pray for judgment as hereinafter set forth.

WHEREFORE, for the first and second causes of action plaintiffs pray that

1 process in due form of law and according to the practice of this Honorable Court  
2 may issue against the defendant vessel, her engines, tackle, machinery, equipment,  
3 etc., that she be condemned and sold to pay any judgment rendered herein, and  
4 that all persons having any interest in said vessel be required to appear and answer  
5 under oath the matters aforesaid; that summons may issue against the defendants;  
6 that this Court decree payment by defendants, and each of them, to plaintiffs of the  
7 aforesaid damages, together with prejudgment interest thereon and costs of suit  
8 herein; and that plaintiffs have such other and further relief as in law and justice  
9 they may be entitled to receive.

10  
11 Dated: June 24, 2010

GIBSON ROBB & LINDH LLP

12  
13 By: 

14 Joshua A. Southwick  
jsouthwick@gibsonrobb.com

15 Attorneys for Plaintiffs

16 RLI INSURANCE COMPANY and  
17 PACIFIC ASIAN ENTERPRISES  
18  
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1 VERIFICATION

2

3 I, J. SCOTT SCHERBAN, declare:

4 I am the Subrogation Manager of RLI Insurance Company, a

5 plaintiff in the above-entitled matter, and I have been authorized to make this

6 verification on its behalf;

7 I have read the foregoing **ADMIRALTY-MARITIME COMPLAINT**

8 **FOR DAMAGE TO OCEAN CARGO AND BREACH OF CONTRACT OF**

9 **CARRIAGE** and know the contents thereof. I am informed and believe that the

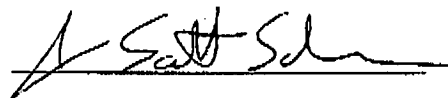
10 matters stated therein are true and on that ground I allege that the matters stated

11 therein are true.

12 I declare under penalty of perjury under the laws of the State of California

13 and The United States of America, that the foregoing is true and correct.

14 Executed this 24<sup>th</sup> day of June, 2010, at New York, New York.

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GIBSON ROBB LINDH

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JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

PACIFIC ASIAN ENTERPRISES and RLI  
INSURANCE COMPANY

**DEFENDANTS**

CROSS CHARTERING N.V., SSA MARINE, INC.  
dba STEVEDORE SERVICES OF AMERICA and  
M.V. CATALONIA V-285

(b) County of Residence of First Listed Plaintiff Orange  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)  
GIBSON ROBB & LINDH LLP  
100 First Street, 27th Floor  
San Francisco, CA 94105  
(415) 348-6000

**'10 CV1335 LAB****WVG****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                      | DEF                      |   | PTF                      | DEF                      |
|---|--------------------------|--------------------------|---|--------------------------|--------------------------|
| Citizen of This State                   | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen of Another State                | <input type="checkbox"/> | <input type="checkbox"/> | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> | <input type="checkbox"/> |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> | <input type="checkbox"/> | Foreign Nation  | <input type="checkbox"/> | <input type="checkbox"/> |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract				<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
				<input type="checkbox"/> 891 Agricultural Acts
				<input type="checkbox"/> 892 Economic Stabilization Act
				<input type="checkbox"/> 893 Environmental Matters
				<input type="checkbox"/> 894 Energy Allocation Act
				<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1331

Brief description of cause:  
Breach of contract of carriage (maritime) and maritime torts

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐ DEMAND \$ 0.00

CHECK YES only if demanded in complaint:  
JURY DEMAND: Yes ☐ No ☒

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

June 24, 2010

Joshua A. Southwick

FOR OFFICE USE ONLY

RECEIPT #

14940

AMOUNT \$

350

6/24/10 PH

JUDGE

MAG. JUDGE

CS0J544

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TOTAL P.02

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS014940  
Cashier ID: bhartman  
Transaction Date: 06/24/2010  
Payer Name: ONE LEGAL LLC

CIVIL FILING FEE  
For: PACIFIC ASIAN ENT V CROSS CHTR  
Case/Party: D-CAS-3-10-CV-001335-001  
Amount: \$350.00

CHECK  
Check/Money Order Num: D3153840  
Amt Tendered: \$350.00

Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.